

Organization:

Rabobank Nederland

Rulemakings:

Entity Definitions; Entity Registration; Internal Business Conduct Standards; Swap Reporting; Real-time Public Reporting

Summary:

On April 11, 2011, CFTC staff met with representatives from Rabobank Nederland (“Rabobank”) and their attorneys at Davis Polk & Wardell LLP (“Davis Polk”) to discuss issues relating to the implementation of Title VII of the Dodd-Frank Act and the extra-territorial application of the CFTC’s regulations to foreign banks. Rabobank and Davis Polk requested the meeting as a follow up to a letter dated February 17, 2011, which Rabobank co-signed and submitted to the CFTC, the Securities and Exchange Commission, and the Board of Governors of the Federal Reserve System (“Federal Reserve”) along with 11 other foreign banks in response to several rulemaking proposals under Title VII.

During the meeting, Rabobank and its attorneys asked the CFTC to allow foreign banks (particularly European-based banks) to continue to book their global swap transactions using a centralized booking model (i.e., booking swaps through a non-U.S. branch of a foreign bank) in a manner that does not subject them to various regulatory requirements under Title VII. In that way, Rabobank asked the CFTC to recognize a comparability framework for certain regulatory requirements that apply to swap dealers at the entity level (such as capital, margin, and internal business conduct standards) and transaction-level requirements that regulate the activities of particular swap transactions. Under their proposed framework, Title VII would apply to a foreign bank in a way that relies on home country prudential regulation in the case of entity-level rules. In the case of transaction-level rules, Rabobank proposed that Title VII would apply to a foreign bank based on the identity of the counterparty to the swap transaction. Finally, this framework would give foreign banks the ability to delegate specific activity-based compliance obligations under Title VII to U.S.-based branches of the foreign bank; although, the foreign bank would maintain ultimate responsibility for compliance.

Rabobank acknowledged that European lawmakers would not likely pass final legislation regulating swaps and swap activities for at least 15 months. As a result, Rabobank asked the CFTC in the short-term to deem a foreign bank’s home country prudential regulation as being comparable to the CFTC’s entity-level rules. Thus, if the Federal Reserve has granted a favorable comparability determination to a home country’s prudential regulatory regime, the CFTC similarly should recognize such regime in implementing Title VII.

CFTC Staff:

Dan Berkowitz
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Visitors:

David Dietz (Rabobank)
Wenchi Hu (Rabobank)
Arthur Long (Davis Polk)
Bill Mansfield (Rabobank)
Courtenay Myers (Davis Polk)
Lenny Schwartz (Davis Polk)
Angelique Slag (Rabobank)
Justin Sliney (Rabobank)